

# ECAT FOUNDATION

## GENERAL TERMS OF DELIVERY AND SERVICES

### FROM:

*Stichting Ecat*

*Wassenaarseweg 56*

*2333 AL LEIDEN*

*Registration number of the Chamber of Commerce: 41174102*

Below to be referred to as: ECAT

### Article 1 Definitions

1. For the purposes of these General Terms the following expressions are used in the meaning attributed to them below, unless the contrary has explicitly been stated:

*ECAT*: the party using these General Terms.

*Co-contracting party*: the client or the buyer.

*Agreement*: the agreement for delivery and/or services.

*Programme*: The combination of services offered by ECAT to Co-contracting parties in a specified Programme year with respect to statistically comparative research into the medical laboratory determinations or methods for such determinations, used by such Co-contracting parties.

*Programme year*: The calendar year for which the Programme is applicable.

### Article 2 General provisions

1. These General Terms shall apply to each quotation, offer and/or agreement between ECAT and a Co-contracting party, insofar as no terms deviating from these Terms have explicitly been set forth in writing by the parties. Terms, if any, in deviation of these General Terms shall be applicable only if and insofar as they have explicitly been set forth in writing.

2. These Terms shall also apply to any agreements with ECAT with respect to the performance of which third parties must be involved.

3. The applicability of the Co-contracting party's general terms, if any, is explicitly rejected. The Co-contracting party's general terms shall be applicable only if and insofar as such applicability has explicitly been agreed in writing, on the understanding that, in case of conflict between applicable terms, the present General Terms shall be given preference.

4. Where one or more provisions of these General Terms would be null and void or voidable, the remaining provisions shall remain in full force and effect. ECAT and the Co-contracting party shall then enter into consultation in order to agree on new provisions to replace the voidable or void provisions, whereby purport and purpose of the original provision shall in as much as possible be observed.

### **Article 3 Quotations and offers**

1. Any and all quotations or offers, in whatever form made in the name of ECAT, shall be without engagement and do not bind ECAT, unless explicitly stated otherwise.
2. Times of delivery stated in quotations and offers made by ECAT shall be an indication only and, in the event they are exceeded, do not entitle the Co-contracting party to dissolution or damages, unless explicitly agreed otherwise.
3. The prices stated in said quotations and offers shall be exclusive of Dutch VAT and other government levies, and of any costs to be incurred within the scope of the Agreement, including forwarding and administration charges, unless explicitly stated otherwise.
4. Standard documentation, such as, *inter alia*, descriptions, programmes and manuals, shall be provided at no cost, unless explicitly stated otherwise.

### **Article 4 Conclusion and term of the Agreement**

1. An Agreement between ECAT and the Co-contracting party shall, except for alteration/renewal on the basis of the provisions set forth below in this Article, be concluded on the date that ECAT confirms in writing, by post, fax or e-mail to such Co-contracting party the receipt from the Co-contracting party of a form or order form used by ECAT for such purpose.
2. Where the Agreement is intended for participation in a Programme organized by ECAT, the Agreement shall apply, unless explicitly stated otherwise, for the duration of the Programme year. The Agreement shall terminate by operation of law at the end of the specified period, without prejudicing the provisions set forth in the next paragraph.
3. By no later than two weeks before the end of each Programme year, the Programme for the new year is sent to the Co-contracting party accompanied by an alteration/termination form and the prices applicable with respect to the new Programme year. If ECAT has not received the form back by no later than two weeks after commencement of the new Programme year, the Agreement shall be tacitly renewed for the same parts and subject to the terms stated in the new Programme for the period of one year. If one or more parts of the Programme, in which the Co-contracting party participated in the relevant year are cancelled in the new year or have undergone substantial changes as far as contents are concerned, the Agreement shall, if the occasion arises, be tacitly renewed only with respect to those parts that are not cancelled or have undergone substantial changes.
4. ECAT shall be at liberty to alter the Programme as of the commencement of each Programme year or to cancel one or more parts, if and insofar as urgent economic, operational, medical and/or scientific reasons should give rise thereto. The prices for the programme parts are fixed annually and the Co-contracting party shall be notified, in writing, of the new prices by no later than in combination with the new Programme. An increase in price for the Programme or any parts thereof of 10% or less shall not be considered as a substantial change within the meaning of paragraph 3.

### **Article 5 Alteration of the Agreement**

1. If it should appear during the performance of the Agreement that the proper performance thereof requires alteration of or addition to the work to be performed, the parties shall alter the Agreement accordingly in good time and in mutual consultation.

2. Where the parties agree that the Agreement is altered or supplemented, the date of completion of the performance may be affected. ECAT shall inform the Co-contracting party hereof as soon as possible.
3. Where the alteration of or supplement to the Agreement would have financial and/or qualitative consequences, ECAT shall inform the Co-contracting party hereof in advance.
4. Where a fixed fee has been agreed, ECAT shall indicate to what extent the alteration of or supplement to the Agreement would cause such fee to be exceeded.
5. Contrary to the provisions set forth in paragraph 3 ECAT shall not be allowed to charge additional costs if the alteration or supplement would be the consequence of circumstances that may be attributed to ECAT.

#### **Article 6 Performance of the Agreement**

1. ECAT shall perform the Agreement to the best of its knowledge and ability and in compliance with the requirements of proper craftsmanship, on the basis of the then current state-of-the-art.
2. If and insofar the proper performance of the Agreement would so require, ECAT has the right to have third parties carry out certain work.
3. The Co-contracting party shall ensure that any and all data indicated by ECAT as being required or with respect to which the Co-contracting party should reasonably understand that they are required for the performance of the Agreement be submitted to ECAT in good time. If data required for the performance of the Agreement are not provided to ECAT in good time ECAT has the right to suspend performance of the agreement and/or to charge the additional costs resulting from the delay to the Co-contracting party at the usual rates.
4. ECAT shall not be liable for any damage of whatever nature consequent upon ECAT's proceeding from incorrect and/or incomplete data provided by the Co-contracting party.
5. ECAT shall exclusively provide the research results obtained within the scope of the Agreement for participation in a Programme offered by ECAT in figures and they comprise, unless explicitly indicated otherwise, no qualitative assessment in subjective terms such as good, bad or mediocre. The research results may be sent by ECAT to the Co-contracting party by post, fax or through the Internet or e-mail.
6. If a defect in a substantial part of samples, material and the like sent within the scope of a certain Programme or part thereof should cause the results of a Programme or part thereof to be unobtainable or useless, ECAT has the right, without the Co-contracting party being entitled to damages, to send within one month after the discovery of the defect new samples, material and the like, so that the results may be obtained as yet.
7. At its request, the Co-contracting party that has participated in a Programme will be provided with a certificate of participation at no cost. The certificate shall not contain any qualitative assessment. The Co-contracting party is deemed to be able to explain the research results to third parties itself.
8. If ECAT or third parties involved by ECAT perform work within the scope of the Agreement at the Co-contracting party's location or a location indicated by the Co-contracting party, the Co-contracting party shall provide, at no cost, the reasonable facilities required by such third parties.

9. If a period of time has been agreed for the completion of certain work or delivery of items within the scope of the Agreement, it shall never be a deadline. Consequently, when the performance period is exceeded, the Co-contracting party must declare ECAT in default in writing.

10. The Co-contracting party shall indemnify ECAT against any claims from third parties that would suffer damage in connection with the performance of the Agreement, which damage is attributable to the Co-contracting party.

#### **Article 7 Research, complaints**

1. The Co-contracting party shall be obliged to inspect or cause to be inspected any items made available or delivered to the Co-contracting party within the scope of the Agreement, and the work completed, including the results of research, at the time of completion or delivery, but at any rate within the shortest possible term. Whilst doing so, the Co-contracting party must inspect whether the quality and quantity of the things completed and/or delivered are in compliance with the Agreement or satisfy the requirements applicable as standard business practice.

2. Any complaints about work carried out under the Agreement shall be reported to ECAT in writing by the Co-contracting party within two weeks after discovery, but by no later than within three weeks after the relevant work was completed.

3. Any visible defects in items delivered or made available to the Co-contracting party for the purposes of performing the Agreement shall be reported to ECAT in writing by no later than within two weeks after they were delivered or made available. Hidden defects shall be reported by no later than three weeks after discovery but by no later than within three months after the delivery or making available.

4. Any complaints relating to invoices shall be reported to ECAT in writing within four weeks after the date of the relevant invoice. After expiry of said period of time, the correctness of the invoices is regarded as having been accepted by the Co-contracting party.

5. The notice of default shall describe the failure as accurately as possible, so that ECAT will be able to respond adequately. In case of late notification, any and all claims of the Co-contracting party on account of any failure in the performance of the Agreement shall lapse.

6. If a complaint that has been lodged in due time and in writing is justified, ECAT shall properly perform the Agreement as yet or submit a new invoice to the Co-contracting party, unless it is a matter of circumstances beyond ECAT's control, or performance has meanwhile demonstrably become meaningless with respect to the Co-contracting party. The latter circumstances shall be notified by the Co-contracting party in writing.

7. If a complaint has been lodged with due observance of the preceding paragraph, the Co-contracting party shall remain obliged to take delivery of and pay the relevant items.

#### **Article 8 Fee, prices**

1. The paragraphs 2. and 4. to 11. inclusive of this Article shall apply in case of Agreements with a fixed fee or fixed price. Where no fixed fee or fixed price has been agreed on, the paragraphs 3. to 11. inclusive of this Article shall apply.

2. Upon the conclusion of the Agreement, the parties may agree on a fixed fee or fixed price.

3. Where no fixed fee has been agreed for an Agreement for the rendering of services, such fee shall be fixed on a time-spent basis. The fee is calculated according to the usual or reasonable hourly rates, applicable for the period in which the work is carried out, unless a different hourly rate has been agreed on.
4. The fee, prices and cost estimates, if any, shall be exclusive of Dutch VAT and any other levies, and of costs, if any, to be incurred under the Agreement, including forwarding costs, delivery costs and administration costs, unless indicated otherwise.
5. In case of Agreements with a term in excess of three months, ECAT shall be entitled to charge the costs payable periodically.
6. If ECAT and the Co-contracting party agree on a fixed fee, hourly rate or fixed price, ECAT shall nevertheless be entitled to increase such fee, rate or price.
7. ECAT shall be entitled to pass on an interim increase of the price, if ECAT is able to prove that the costs of, for instance, wages and raw material, or as a consequence of a change of exchange rates, have risen considerably between the date of conclusion of the Agreement and the delivery date.
8. In addition, ECAT may effect an interim change of the fee when it appears, during the carrying out of the work, that the originally agreed or anticipated amount of work has been inadequately assessed upon the conclusion of the Agreement to such extent, and this cannot be attributed to ECAT, that ECAT cannot reasonably be expected to carry out the agreed work against the originally agreed fee.
9. In the event of a price increase, the Co-contracting party shall be entitled to dissolve the Agreement, where the interim increase in fee, rate or price is effected within three months after the conclusion of the Agreement. After expiry of this period, the Co-contracting party has the right to dissolve the Agreement if the increase is in excess of 5%. The Co-contracting party shall not be entitled to dissolve the Agreement, if the increase in the fee, rate or price is the consequence of a statutory power.
10. ECAT shall inform the Co-contracting party of its intention to increase the fee, rate or price in writing. Whilst doing so, ECAT shall state the extent and commencement date of the increase.
11. If the Co-contracting party does not wish to accept the interim increase in the fee or rate announced by ECAT, the Co-contracting party shall have the right to give notice of termination of the Agreement in writing within ten working days after receipt of the said notification, or to cancel the contract as of the date stated in ECAT's notification as the date on which the adjustment of price or rate would have become effective.

#### **Article 9 Payment**

1. Payment shall be made within six weeks after the date of invoice in a way indicated by ECAT in the currency in which the amount is charged. Objections against the amounts of the invoice do not suspend the payment obligations.
2. Where the Co-contracting party fails to make payment within the period of six weeks, the Co-contracting party shall be in default by operation of law. The Co-contracting party shall then owe an interest of 1% per month, unless the statutory interest would be higher, in which case the statutory interest shall apply. The interest on the amount due shall be calculated as of the date on which the Co-contracting party is in default up to the date of payment of the full amount.

3. In the event of the Co-contracting party's liquidation, bankruptcy, seizure or suspension of payment, the Co-contracting party's debts payable to ECAT shall be due for immediate payment.

4. ECAT shall have the right to use payments made by the Co-contracting party in first instance to reduce the costs, then to reduce the interest due and finally to reduce the principal sum and accrued interest. Without breaching the contract, ECAT may refuse an offer for payment if the Co-contracting party indicates another attribution order. ECAT may refuse full payment of the principal sum, if no simultaneous payment is made of the interest due and accrued, as well as of the costs.

#### **Article 10 Collecting costs**

1. Where the Co-contracting party is in default with or fails to fulfil its obligations within the specified time, any and all reasonable out-of-court costs for obtaining payment shall be payable by the Co-contracting party. The Co-contracting party shall at any rate owe collecting costs in case of a monetary claim. The collecting costs shall amount to 15% of the value of the principal sum, but at least to EUR 50.00.

2. If ECAT has incurred higher costs, which were necessary within reason, they shall also qualify for reimbursement.

3. Any reasonable legal and foreclosure costs incurred shall also be payable by the Co-contracting party.

#### **Article 11 Transfer of risk**

1. The risk of loss of or damage to items delivered to the Co-contracting party under the Agreement or made available to the Co-contracting party under the Agreement, as well as any liability for damage resulting from defects in those items and the risk of realization of hazards inherent to such items shall pass on to the Co-contracting party at the time of delivery or making available, *de jure* and/or *de facto*, of these items and thus have been brought within the Co-contracting party's power or within the power of a third party to be designated by the Co-contracting party.

#### **Article 12 Permits, licences and the like**

1. The Co-contracting party shall ensure that all required permits, concessions, licences, permissions and the like required for ECAT's fulfilment of its obligations under the Agreement are obtained.

2. The lack of any permit, concession, licence, permission and the like as referred to in the previous paragraph, shall be regarded as a failure attributable to the Co-contracting party and such lack shall not release the Co-contracting party from its obligations vis-à-vis ECAT, nor justify the Co-contracting party's invoking of a right to suspend performance or of force majeure.

#### **Article 13 Liability**

1. Although ECAT conducts thorough tests of the samples, material and the like to be delivered or made available to the Co-contracting party under the Agreement for the presence of infections such as hepatitis and HIV, the Co-contracting party is explicitly notified of the fact that infections cannot be excluded, so that any items made available or delivered by ECAT, including test material, must be treated with all required precautions, this with a view to possible contamination by micro organisms.

The Co-contracting party shall treat the material delivered or made available by ECAT as patient material.

2. If ECAT would be liable, such liability is restricted to the things set forth in this provision.

3. Under no circumstance shall ECAT be liable for damage that is directly or indirectly caused by the inexpert or careless use by or in the name of the Co-contracting party of items made available or delivered by ECAT to the Co-contracting party, including the research results, or the use thereof for any other purpose than the purpose for which such items may reasonably be considered suitable or for any other purpose than the purpose for which such items may be suitable according to objective criteria or for another purpose than the purpose ECAT could reasonable rely on that such items would be used for.

4. If ECAT is liable for direct damage, such liability is restricted to at most the amount of the payment to be made to ECAT by its insurer or to at most four times the invoice amount, or four times the invoice amount relating to such part of the Agreement to which the liability relates. ECAT's liability for direct damage shall at all times be limited to a maximum sum of € 20,000.00 (twenty thousand Euros).

5. Contrary to the provisions set forth in paragraph 3 of this Article, the liability under Agreements with a term in excess of six month shall further be limited to such part of the fee or price that is payable in respect of the last six months.

6. Direct damage shall be understood to mean:

- the reasonable expenses incurred to establish the cause and extent of the damage, insofar as such establishment is related to damage within the meaning of these Terms;
- the reasonable expenses, if any, incurred to cause ECAT's faulty performance to be in compliance with the Agreement, unless such faulty performance is not attributable to ECAT;
- the reasonable expenses incurred for preventing or limiting the damage, insofar as the Co-contracting party proves that such expenses did result in limiting the direct damage as referred to in these General Terms.

7. ECAT shall never be liable for indirect damage, including consequential damage, loss of profit, lost savings and loss on account of operational standstill.

8. Limitations of liability for direct damage as set forth in these Terms shall not be applicable if the damage is attributable to intent or gross negligence of ECAT or its subordinates.

#### **Article 14 Indemnity**

1. The Co-contracting party shall indemnify ECAT against third party claims on account of intellectual property rights to material or data provided by the Co-contracting party, which are used in the performance of the Agreement.

2. If the Co-contracting party should provide information carriers, electronic files or software etc. to ECAT, the former shall warrant that such information carriers, electronic files or software is free from viruses and defects.

3. The Co-contracting party shall indemnify ECAT against third party claims with respect to damage inflicted directly or indirectly due to the lack of permits, concessions, licences, permissions and the like referred to in Article 12.

### **Article 15 Force majeure**

1. The parties shall not be obliged to fulfil any obligation, if they are prevented from doing so due to circumstances that are not attributable to their fault, and for which they are not responsible, neither under the law, a legal transaction or common opinion.
2. For the purposes of these General Terms, force majeure is understood to mean, in addition to the definitions under the law and case law, any external cause, whether or not anticipated, which is beyond ECAT's control, but due to which ECAT is unable to fulfil its obligations. Industrial actions within ECAT's business and non-availability or late availability of raw material required within the scope of the Agreement are included in such circumstances of force majeure.
3. ECAT shall also have the right to invoke force majeure if the circumstances that prevent performance or further performance occur after ECAT would have had to fulfil its obligations.
4. During the period the circumstances of force majeure continue, the parties may suspend the obligations under the Agreement. Where this period lasts longer than two months, either party shall have the right to dissolve the Agreement, without being obliged to pay damages to the other party.
5. Insofar as ECAT had already fulfilled part of its obligations under the Agreement at the time the circumstances of force majeure occurred or will be able to fulfil the same, and an independent value may be attached to such part fulfilled or to be fulfilled, ECAT shall have the right to invoice the part fulfilled or to be fulfilled separately. The Co-contracting party shall be obliged to pay this invoice as if it were a separate agreement.
6. Where ECAT is, due to force majeure, prevented from fulfilling its obligations with respect to one or more of its Co-contracting parties, but not from fulfilling its obligations with respect to all its Co-contracting parties, ECAT shall be entitled to decide, at its discretion, which of the obligations and vis-à-vis which Co-contracting parties ECAT shall perform, and the order in which such performance is effected.

### **Article 16 Notice of termination**

1. If the Agreement covers participation of one Programme year in a Programme organized by ECAT, preliminary termination shall not be possible. In all other instances either party may give written notice of termination of the Agreement at any time whilst duly observing a notice period of at least three months.
2. If the Co-contracting party gives notice of preliminary termination of the Agreement, ECAT shall be entitled to compensation of the demonstrable loss of capacity resulting from such termination, unless facts and circumstances attributable to ECAT would be the basis of the termination. Further, the Co-contracting party shall then be under the obligation to pay the bills for work done so far. The provisional results of the work done so far shall be made available, under the usual reserve, to the Co-contracting party.
3. If ECAT gives notice of preliminary termination of the Agreement, ECAT shall ensure, in consultation with the Co-contracting party, the transfer of work that is still to be done to third parties, unless facts and circumstances attributable to the Co-contracting party would be the basis of the termination.

4. If ECAT's transfer of the work would entail additional costs, they shall be invoiced to the Co-contracting party.

#### **Article 17 Suspension and dissolution**

1. ECAT shall have the right to suspend the fulfilment of its obligations or to dissolve the Agreement, if:

- the Co-contracting party fails to fulfil its obligations under the Agreement or fails to fulfil them in full.
- ECAT has become aware, after conclusion of the Agreement, of facts and circumstances that give ECAT good reason to fear that the Co-contracting party will fail to fulfil its obligations. In the event there is good reason to fear that the Co-contracting party will fulfil its obligations only in part or improperly, such suspension shall be allowed only insofar as the failure justifies it.
- upon the conclusion of the Agreement, the Co-contracting party has been requested to provide security for the fulfilment of its obligations under the Agreement and such security is not provided or is inadequate.

2. Further ECAT shall have power to dissolve the Agreement or have it dissolved if circumstances occur that are of such nature that performance of the Agreement cannot or no longer be demanded according to the criteria of reasonableness and fairness, or if otherwise circumstances occur due to which the unaltered force and effect of the Agreement cannot reasonably be required.

3. If the Agreement is dissolved, the amounts receivable by ECAT from the Co-contracting party shall be due for immediate payment. If ECAT suspends the fulfilment of its obligations, it shall retain its rights under the law and this Agreement.

4. ECAT shall always retain the right to claim damages.

#### **Article 18 Confidentiality**

1. Either party shall be obliged to keep confidential any and all information they acquired from each other or from other sources within the scope of their agreement. Information shall be considered as confidential if it was notified by the other party or if it results from the nature of the information.

2. Any results from research conducted by ECAT within the scope of the Programme offered by ECAT that can be traced to a certain Co-contracting party shall be confidential and shall only be notified to the relevant Co-contracting party.

3. If ECAT should, on the basis of a statutory provision or court decision, be obliged to disclose confidential information to the third party designated by the law or the competent court, and ECAT cannot in such case invoke the right of non-disclosure acknowledged or allowed under the law or by the competent court, ECAT shall not be obliged to pay compensation or damages, and the Co-contracting party shall not have the right to dissolve the Agreement on the basis of any resultant damage.

#### **Article 19 Intellectual property rights and copyrights**

1. Without prejudicing any other provision set forth in these General Terms, ECAT reserves the rights and powers vested in ECAT pursuant to the intellectual property right.

2. The Co-contracting party shall not be permitted to modify the items delivered or made available, unless the nature of the items delivered or made available should require otherwise or unless agreed otherwise.
3. Any designs, sketches, drawings, films, software or other material or files, whether electronic or otherwise, made by ECAT within the scope of the Agreement shall remain the property of ECAT, irrespective of whether they were handed over to the Co-contracting party or to third parties, unless agreed otherwise.
4. Any and all documents provided by ECAT such as reports, advice, agreements, designs, sketches, drawings, films, software etc. shall exclusively be intended for use by the Co-contracting party and they may not be reproduced, published or disclosed to third parties by the Co-contracting party without ECAT's permission obtained in advance, unless the nature of the documents should dictate otherwise.
5. ECAT reserves the right to use the know-how acquired due to the carrying out of the work for other purposes, insofar as no confidential information is disclosed to third parties.

#### **Article 20 Disputes**

1. The competent court in The Hague, the Netherlands, shall have exclusive jurisdiction to take cognizance of disputes.
2. The parties shall not turn to the court until after they have made every effort to reach an amicable settlement of a dispute.

#### **Article 21 Applicable law**

The law of the Netherlands shall govern each Agreement between ECAT and the Co-contracting party.

#### **Article 22 Amendment and location of the Terms**

1. These Terms have been filed at the offices of the Chamber of Commerce at Rotterdam under number 41174102
2. Where at a certain point in time versions of these General Terms in more than one language have been filed, the text of the Dutch version shall prevail in the event of a dispute about the interpretation of the General Terms.

The most recent version filed or the version applicable at the time the Agreement was concluded shall be the version applicable.